

STATE OF MAINE  
AROOSTOOK, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.: CARSC-CV-09-

Wallace & Ella Boyd, of Mars Hill, County )  
of Aroostook, State of Maine, )

Malissa Boynton & Rusty Johnston, of )  
Mars Hill, County of Aroostook, State of )  
Maine, )

Robert & Rebecca Burtchell, of Mars Hill, )  
County of Aroostook, State of Maine, )

Steven Burtchell, of Westfield, County of )  
Aroostook, State of Maine, )

Merle & Carol Cowperthwaite, of Mars )  
Hill, County of Aroostook, State of Maine, )

Mark & Kate Harris, of Mars Hill, County )  
of Aroostook, State of Maine, )

Richard & Shirley Fletcher, of Mars Hill, )  
County of Aroostook, State of Maine, )

Steven & Tammie Fletcher, of Mars Hill, )  
County of Aroostook, State of Maine, )

Rodney & Dawn Mahan, of Mars Hill, )  
County of Aroostook, State of Maine, )

Charles Radell of Mars Hill, County of )  
Aroostook, State of Maine, )

Arnold & Lorraine Tardy, of Mars Hill, )  
County of Aroostook, State of Maine, )

Perrin & Wendy Todd, of Mars Hill, )  
County of Aroostook, State of Maine, )

**COMPLAINT**

Fred & Marie Williams and Teresa )  
Forester, of Mars Hill, County of )  
Aroostook, State of Maine, )

)  
Frances Kilcollins, of Mars Hill, County of )  
Aroostook, State of Maine, )

)  
PLAINTIFFS, )

)  
v. )

)  
First Wind Energy, LLC, of Massachusetts, )  
formerly U.P.C. Wind Management, LLC, )  
and formerly Evergreen Wind Power, LLC, )  
having a place of business in Mars Hill, )  
County of Aroostook, State of Maine, )

)  
and )

)  
Sargent Corporation, a Maine )  
Corporation, having a place of business in )  
Stillwater, County of Penobscot, State of )  
Maine, )

)  
and )

)  
Maine Drilling and Blasting, Inc., a Maine )  
Corporation, having a place of business in )  
Gardiner, County of Kennebec, State of )  
Maine, )

)  
and )

)  
Inhabitants of the Town of Mars Hill, )  
Maine, a body politic, )

)  
DEFENDANTS. )

NOW COME, the Plaintiffs, by and through their attorney, Peter S. Kelley, Esq. and  
state as follows:

## STATEMENT OF FACTS

1. That all Plaintiffs are, and have been, residents of the Town of Mars Hill, except Steven Burtchell, who owns land in Mars Hill but is a resident of Westfield, Maine.
2. The Defendant, FIRST WIND of Massachusetts is a Corporation doing business in the State of Maine and having a wind turbine operation in Mars Hill, Maine. In the past, FIRST WIND has done business as U.P.C. Wind Management, LLC and Evergreen Wind Power, LLC.
3. The Defendant, Sargent Corporation, is a Maine Corporation with a place of business in Stillwater, Maine. It was the general contractor for the construction of the windmills on Mars Hill Mountain in 2006-2007.
4. The Defendant, Maine Drilling and Blasting, Inc., is a Maine Corporation having a place of business in Gardiner, Maine. It was the sub-contractor who blasted portions of Mars Hill Mountain for construction of the wind turbines.
5. The Defendant, Inhabitants of the Town of Mars Hill, is a body politic which was the co-applicant to the Maine Department of Environmental Protection (DEP) for construction of said wind turbines.
6. The Plaintiffs are owners and/or residents of their homes which are located near the north and east of Mars Hill Mountain.
7. Prior to 2008, the Defendants, FIRST WIND and the Town of Mars Hill, were co-applicants to D.E.P. for a permit for FIRST WIND to construct windmills on Mars Hill Mountain.
8. It was the legal obligation of the applicants to notify by registered letter, return receipt requested, the owners regarding the application for the permit. This was not done.
9. It was also the obligation of the Mars Hill Town Manager and Town council to use due diligence to consult with its attorney and an engineer to determine if it should be an applicant for the DEP permit and to determine if the operation of the turbines would cause harm to the Plaintiffs. This was not done, thereby denying the Plaintiffs notice, due process of law, and fundamental fairness in the permitting process. A Notice of Claim was served on the Town pursuant to Maine Tort Claims Act in September 2007.
10. D.E.P. approved a permit for the construction and operation of Defendant's

wind turbines. The permitting process was flawed in that fundamental due process under the Maine and Federal Constitutions was denied to the Plaintiffs in that proper notice was not given to Plaintiffs of the construction, blasting, operation, and planning of the wind turbines.

11. In the Summer of 2006, the Defendant, Maine Drilling and Blasting, Inc., performed extensive blasting which not only was extremely loud and disruptive, but which caused physical damage to the Plaintiffs' property and physical injury to the Plaintiffs' enjoyment of life and peace. The Plaintiffs were not notified of the times of when the blasting was to occur.
12. Before the blasting and operation of the windmills, the Plaintiffs lived in areas to the north and east of the Mountain in a peaceful, remote, quiet, serene, and visually pleasant setting.
13. When all of the turbines became operational for the first time in late March 2007, it became immediately obvious to the Plaintiffs that the noise from the turbines was invasive and caused them loss of enjoyment of life, loss of peace and quiet, loss of their full use of their home and land. Some Plaintiffs required medical treatment and counseling. Many have, and continue to, lose sleep, suffer headaches, suffer considerable stress, and other physical and emotional ailments.
14. The real estate values of the Plaintiffs' homes have been greatly reduced, as is supported by an expert's opinion, of their property values before and after operation of the turbines.
15. Damage to adjoining wetlands and streams have been altered by the blasting and operation of the turbines.
16. The presence of wildlife has been affected by the construction and the operation of the turbines.
17. The shadow flicker effects from the operation of the turbines have caused injury to the Plaintiffs and disruption of their right to live in a pleasant setting.
18. The visual effects of the presence of the windmills have negatively affected the Plaintiffs' peace and enjoyment of their remote setting.
19. Defendant's sound study shows noise levels above 45 and 50 decibels. The noise level from the 2006 blasting and by the turbines operation has been highly disturbing to the Plaintiffs. They have been unable to sit outside in their yard

without having their peace disturbed by the Defendant's wind turbines. They are also often bothered inside their homes as to sleep and comfort.

20. The strobe/shadow effects and blinking red lights have forced the Plaintiffs to keep the blinds on their windows closed. As a result the Plaintiffs have lost the use and enjoyment of the view they used to have from their home.

### CLAIMS AND CAUSES OF ACTION

#### COUNT I

#### CONTINUING PRIVATE NUISANCE AND TRESPASS

21. The Plaintiffs incorporate by reference all allegations set forth above.
22. The Defendants' actions in constructing and operating its wind turbines on Mars Hill Mountain have, and do, cause disturbing noises, flashing red lights, strobe/shadow effect and the unreasonable interference with the Plaintiffs' use and enjoyment of their property, causing a continuing private nuisance and trespass to them. TV reception has been adversely affected.
23. The Defendants' actions continue to cause significant harm to Plaintiffs and their property, including personal discomfort, inconvenience, annoyance, loss of enjoyment of life, and other damages.

#### COUNT II (NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

24. The Plaintiffs incorporate herein all allegations set forth above.
25. Defendants' actions have been negligent and unreasonable because the wind turbines have and continue to cause disturbing noises, flashing red lights, and strobe/shadow effects, all of which cause Plaintiffs to suffer emotional distress and the adverse effect on their physical and emotional health and on their property values.

#### COUNT III – PROPERTY DAMAGES

26. The Plaintiffs incorporate all allegations set forth above.
27. The Defendants' activity in the construction, blasting, and operation of the wind turbines, has caused the fair market value of Plaintiffs' property to be diminished for residential and other uses.

**COUNT IV – INVERSE CONDEMNATION UNDER THE MAINE CONSTITUTION  
AND STATUTES AND FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S.  
CONSTITUTION**

28. The Plaintiffs incorporate the allegations set forth above.
29. The Defendants' activities have been undertaken pursuant to the permit granted by D.E.P., a public regulatory agency of the State of Maine, without providing the Plaintiffs procedural and substantial due process.
30. The Defendants' actions and its construction and operation of its wind turbines have resulted in the taking of a negative nuisance easement over the Plaintiffs' property without compensation or due process of law.
31. The Defendants' actions constitute inverse condemnation of the Plaintiffs' property under Maine law and the Fifth and Fourteenth Amendment to the U.S. Constitution. Therefore, the Plaintiffs are entitled to just compensation for the loss of their property.

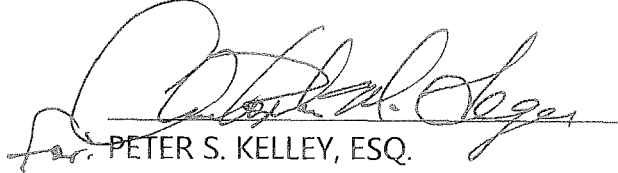
**RELIEF REQUESTED**

WHEREFORE, the Plaintiffs respectfully request that the Court order:

1. Defendant to compensate them for all past and future inconvenience, personal injury, annoyance, discomfort, damage to their wet lands, and other nuisance and emotional distress damages they have and will continue to suffer in the future because of the construction and operation of Defendant's wind turbines near their property.
2. Defendant to compensate Plaintiffs for the diminution in the fair market value of their property caused by the construction and operation of Defendant's wind turbines near their property.
3. Defendant to remove one or more of its wind turbines and/or install technological improvements and implement operational controls or procedures to abate the negative noise, ice, flashing red lights, and strobe/shadow effects of Defendant's wind turbines on the Plaintiffs and their property to the maximum extent possible, as equitable relief.
4. Defendant to compensate Plaintiffs for the fair market value of the property which the Defendant has taken pursuant to the Maine Constitution, and the Fifth and Fourteenth Amendments to the U.S. Constitution.

5. Defendant to pay Plaintiffs for their attorneys fees, costs and disbursements in this matter.
6. Such other relief as the Court deems fair and equitable.

Dated at Caribou, Maine, this 27<sup>th</sup> day of March, 2009.

A handwritten signature in dark ink, appearing to read "Peter S. Kelley", is written over a horizontal line. The signature is fluid and cursive.

PETER S. KELLEY, ESQ.  
ATTORNEY FOR PLAINTIFFS  
P.O. BOX 66  
CARIBOU, ME 04736  
Maine Bar #1940